the ambulance driver of the defendant, a charitable corporation, the plaintiff was run over and injured. *Held*, that the defendant is liable in damages. *Kellogg* v. *Church Charity Foundation*, 112 N. Y. Supp. 566.

It is generally stated as a rule of law that a charitable corporation is not liable for the torts of its agents unless there has been negligence in their selection. *McDonald* v. *Mass. Gen. Hospital*, 120 Mass. 432. In nearly all the cases, however, the so-called agents were physicians or nurses over whom the institution had no real control. In such cases the doctrine of *respondeat superior* does not apply; hence the exemption of the corporation is easily explained. *Union Pac. Ry. Co.* v. *Artist*, 60 Fed. 365. Even where the relation of master and servant exists it might be that no beneficiary of a charity should be permitted to complain of negligence in its administration, and at least one case has so held. *Powers* v. *Mass. Homeopathic Hospital*, 101 Fed. 896. But this ground of non-liability cannot prevail against strangers. *Bruce* v. *Central M. E. Church*, 147 Mich. 230. The court in refusing to exempt a charitable corporation for the tort of its servant against a stranger is distinctly logical. And since the liability is incurred in fulfilling the purposes of the trust, it cannot be objected that there is a diversion of the trust funds. *Glavin* v. *R. I. Hospital*, 12 R. I. 411. A recent case denying liability may be distinguished on the ground that in it the servant of the institution was performing a government function. *Noble* v. *Hahneman Hospital of Rochester*, 112 N. Y. App. Div. 663.

DAMAGES — MEASURE OF DAMAGES — PRIMA FACIE RULE IN ADVERTISING CONTRACT. — The defendant agreed to pay a certain sum for the publication of an advertisement in the plaintiff's periodical for one year. After the plaintiff had prepared the advertisement for printing, the defendant repudiated the contract. *Held*, that the contract price is the measure of damages, unless the defendant shows the amount that should be deducted by reason of the repudiation. *Ware Bros. Co.* v. *Cortland Cart & Carriage Co.*, 192 N. Y. 439.

The object of damages for breach of contract is to place the plaintiff in a situation as good as if the contract had been performed. See *Robinson* v. *Harman*, 1 Exch. 850. Accordingly, when performance by the plaintiff would involve outlay or expense, he recovers merely the difference between the contract price and the estimated cost of performance. *Singleton* v. *Wilson*, 85 Tenn. 344. And if performance would ordinarily cause expense, there should be no presumption that the contract price is the measure of damages. But if performance would not ordinarily cause expense, the contract price is *prima facie* the measure of damages, and the burden is on the defendant to show any reduction. Contracts for personal service belong to the latter class. *Howard* v. *Daly*, 61 N. Y. 362; *Pond* v. *Wyman*, 15 Mo. 175. The class also includes contracts where performance would originally have involved expense, but where the expense has already been incurred, so that completion of performance requires no further expenditure. *Wood* v. *Schettler*, 23 Wis. 501. In the principal case, whether the expense of performance is regarded as so small as to be negligible, or as already incurred by preparations for printing, the contract price is *prima facie* the measure of damages. *Peck & Co.* v. *Kansas City, etc., Co.*, 96 Mo. App. 212.

DOMICILE — PERSONS UNDER DISABILITY. — A guardian was appointed over X's person and property because of insanity. X, with his guardian's consent, removed to another state, where he took up his residence, *animus manendi*. *Held*, that X is domiciled in that state. *In re Kingsley*, 160 Fed. 275 (Dist Ct., Vt.). See NOTES, p. 220.

ELECTIONS — DISFRANCHISEMENT: EFFECT OF SENTENCE SUSPENDED. — The New York Constitution provides that a person convicted of an infamous crime shall be disfranchised. A was found guilty of burglary, but sentence was suspended. *Held*, that he is not disfranchised. *People* v. *Fabian*, 192 N. Y. 444.

Where a conviction involves, as a consequence, disabilities, disqualification, or forfeitures, courts will, as a rule, enlarge the ordinary meaning of the word "con-

viction" so as to include judgment or sentence, This rule of construction has been applied where conviction disqualifies a witness either at common law or by statute, and where a person is disqualified by conviction to hold a seat in the legislature. *Lee* v. *Gansel*, Cowp. 1; *Commonwealth* v. *Gorham*, 99 Mass. 420; *Case of Falmouth*, Mass. Election Cases, 1853 ed., 203. The rule is also invoked where a conviction for violating its conditions forfeits a liquor dealer's license. *Commonwealth* v. *Kiley*, 150 Mass. 325. *Cf. Schiffer* v. *Pruden*, 64 N. Y. 47. Furthermore, it is usually held that no appeal lies from a verdict with sentence suspended, and in New York, at least, it is doubtful whether the governor has power to pardon in such a case. See *People* v. *Markham*, 114 N. Y., App. Div. 387; N. Y. CONST., art. IV., § 5. Hence the result of suspending sentence, a proceeding intended to benefit a defendant, would be to deprive him of a chance to regain rights of citizenship by an appeal or by seeking a pardon. These consequences of the narrow interpretation of "conviction" afford strong reason for presuming that the word was here used in the broader sense.

FEDERAL COURTS — JURISDICTION BASED ON DIVERSITY OF CITIZENSHIP — PRINCIPAL AND SURETY.— A contracted with B to pay the judgment in a suit in a state court by B against C if judgment was rendered against C. The court gave judgment against C. B and C were citizens of the same state, and A was a citizen of another state. A brought a bill in the federal court to have the judgment avoided for fraud, and C was made a defendant to give jurisdiction by diversity of citizenship. *Held*, that the federal court has no jurisdiction. *Steele* v. *Culver*, U. S. Sup. Ct., Oct. 26, 1908.

For the federal courts to have jurisdiction by diversity of citizenship all the parties plaintiff must be citizens of different states from all the parties defendant. *Gage* v. *Riverside Trust Co.*, 156 Fed. 1002. Such jurisdiction is not affected by merely formal or unnecessary parties. *Reese* v. *Zinn*, 103 Fed. 97. But necessary parties must be aligned as plaintiffs or defendants according to their real interests and the facts of the case. *Gage* v. *Riverside Trust Co.*, *supra*. And a party whose real interest places him on one side cannot be transferred to the other in order to give jurisdiction by diversity of citizenship. *Mann* v. *Gaddie*, 158 Fed. 42. And, when a suit is brought by one in a representative or fiduciary capacity, the jurisdiction of the federal courts depends upon his citizenship, and not upon the citizenship of the person represented or interested. *Bonnafee* v. *Williams*, 3 How. (U. S.) 574. It seems settled that, where the action is to have a judgment set aside, the jurisdiction depends on the citizenship of the person against whom the judgment was rendered, and not on the citizenship of the person moving to have it set aside. *King* v. *Davis*, 137 Fed. 198.

INSURANCE — PREMIUMS — RECOVERY BACK BY POLICY HOLDER AFTER POLICY ANNULLED. — During the life of a title insurance policy the insurer went into a receivership, and the policy was annulled. The insured sued for the amount of a premium paid. *Held*, that the company is entitled to deduct the value of insurance given during the time elapsed between the date of the policy and the date of its annulment. *State ex rel. Schaefer* v. *Minn. Tit. Ins. Co.*, 116 N. W. 944 (Minn.).

For a discussion of a policy holder's right to receive premiums paid on a termination of the contract of insurance in the case of life insurance, see 22 HARV. L. REV. 134.

LEGITIMACY — PUTATIVE MARRIAGE. — Parents domiciled in Scotland or Canada went through a marriage ceremony in California, honestly believing in the validity of a divorce which a former husband had obtained in North Dakota upon substantive and jurisdictional grounds not recognized in England, Canada, or Scotland. *Held*, that the parents' mistake having been one of law, not fact, the doctrine of putative marriage does not apply. *Re Stirling*, [1908] 2 Ch. 344. See NOTES, p. 222.

MALICIOUS PROSECUTION — BASIS AND REQUISITES OF ACTION — WRONGFUL INSTITUTION OF PATENT INTERFERENCE PROCEEDINGS. — The defend-